

30 SEP 2003

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In re Application of :  
Carmeliet et al. :  
Application No. 10/009,436 :  
PCT No.: PCT/EP00/05318 :  
Int. Filing Date: 08 June 2000 : DECISION  
Priority Date: 10 June 1999 :  
Atty. Docket No.: 522-1767 :  
For: Non-Human Transgenic Animals :  
Deficient In GAS6 Function And Their Use :  
:

This is in response to the "Petition To Withdraw Notice Of Abandonment" filed on 19 February 2003.

### BACKGROUND

This international application was filed on 08 June 2000 and claimed an earlier priority date of 10 June 1999. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. The International Bureau transmitted a copy of the published international application to the USPTO on 21 December 2000. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 10 December 2001.

On 06 December 2001, applicants filed, *inter alia*, the basic national fee.

On 05 February 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed, requiring an executed oath or declaration of the inventors and a surcharge under 37 CFR .1492(e).

On 09 January 2003, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant, indicating that this international application had become abandoned with respect to the United States for failure to timely reply to the Notification of Missing Requirements.

### DISCUSSION

Counsel indicates that the 05 February 2003 "Notice of Missing Requirements was never received" and requests withdrawal of the holding of abandonment on that basis. As explained in MPEP 711.03(c), and following *Delgar v. Schuyler*, 172 USPQ 513 (D.D.C. 1971), an adequate showing of non-receipt of papers mailed to applicant by the Office must include (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records

practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in petitioner's statement). A review of the totality of evidence now of record establishes that, within the practice under MPEP 711.03(c), petitioner has satisfied requirement (1), but has not satisfied requirements (2) and (3).

Regarding requirement (1), the petition includes an appropriate statement.

Regarding requirement (2), petitioner states that "the undersigned can state unequivocally that the document was not received, and has searched both the file for this application as well as other papers to make sure that such is the case." The petition is accompanied by a copy of docket records for the date the Notification of Missing Requirements would have been docketed for response had it been received, and petitioner references said docket records. As such, it would be appropriate to interpret counsel's statement as a statement "that a search of the file jacket and docket records indicates that the Office action was not received."

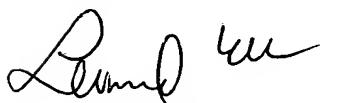
Regarding requirement (3), the petition is accompanied by appropriate docket records.

### **DECISION**

The petition is **GRANTED** for the reasons explained above.

The holding of abandonment is hereby **WITHDRAWN** and the Notification of Abandonment mailed on 09 January 2003 is **VACATED**.

This application is being returned to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **19 February 2003**.



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